

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
vs.)	CASE NO. 4:20-CR-11-51-FL
)	
PATRICK J. FEDAK,)	
)	
Defendant.)	
_____)	

THURSDAY, MARCH 10, 2022
INITIAL APPEARANCE AND DETENTION HEARING
HELD IN NEW BERN, NORTH CAROLINA
BEFORE THE HONORABLE LOUISE W. FLANAGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

BARBARA D. KOCHER, Assistant U.S. Attorney
U.S. Attorney's Office
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant:

DIANA PEREIRA, Assistant Public Defender
Federal Public Defender's Office
150 Fayetteville Street, Suite 450
Raleigh, North Carolina 27601

USPO:

MELISSA LUNSMAN
REBECCA RABONE

MICHELLE A. McGIRR, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina

I N D E X

WITNESS:

NCIS Special Agent Peter Salomon

EXAMINATION:

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WITNESS:

Matthew Chambers

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* * *

1 (Thursday, March 10, 2022)

2 **P R O C E E D I N G S**

3
4 (The defendant, Patrick J. Fedak, escorted into the courtroom
5 at 9:27 a.m.)

6 (Open Court at 9:38 a.m.)

7 THE COURT: Good morning.

8 The Court has several matters calendared before it this
9 morning and I'm starting with, quite obviously, the case of United
10 States of America v. Patrick Fedak.

11 And those in attendance with respect to the Panduit
12 matter, well, I don't have a crystal ball. I don't reasonably
13 believe this criminal session will be protracted.

14 When it's concluded in, I think, a fairly short period of
15 time, the Court will take a 10-minute recess and then start up with
16 the civil matter.

17 So, counsel -- new counsel, Ms. Brennan, welcome.

18 MS. PEREIRA: Ms. Pereira.

19 THE COURT: Ms. Pereira. I'm sorry, yes. That is Ms.
20 Pereira behind the mask.

21 All right. So we've got -- are you the -- taking the
22 laboring oar here?

23 MS. PEREIRA: I was the duty attorney for Wilmington
24 today, your Honor, yes, so I just --

25 THE COURT: So we just moved you here.

1 MS. PEREIRA: Yes, your Honor.

2 THE COURT: All right. And Ms. Kocher --

3 MS. KOCHER: Yes, your Honor.

4 THE COURT: -- got that one right.

5 MS. KOCHER: Good morning.

6 THE COURT: Good morning.

7 I'm beginning to get a little laxer in my COVID
8 prohibitions or procedures and if counsel has been fully vaccinated,
9 and client as well -- and I interpret that to mean your booster
10 shot -- if you wish to remove your mask during this proceeding, you
11 may. It's completely up to you.

12 I had set aside time next week -- Sean, I think I'd like
13 you to stay here, okay -- for Mr. Fedak's change of plea and a lot
14 has changed since then. That was to be March 16th.

15 So today you come before me for what is called an initial
16 appearance pursuant to Rule 5 of the Rules of Criminal Procedure.
17 It's the opportunity for the Court to explain to you what you're
18 charged with.

19 And there is also appearing on the docket a motion for
20 detention. Is that what's in front of me, Ms. Kocher?

21 MS. KOCHER: Yes, your Honor.

22 THE COURT: So I wanted to bring you all from Wilmington
23 to New Bern because I think what happens here today reasonably bears
24 on what may or may not happen next week.

25 So the indictment that was returned back in December of

1 2020, to which Mr. Fedak entered into a plea agreement recently,
2 agreeing to plead guilty to Count One, with the Government
3 dismissing Count Two.

4 That, I believe, was the bargain you negotiated, correct,
5 counsel?

6 MS. KOCHER: That is correct, your Honor.

7 THE COURT: That charged you, Mr. Fedak, with beginning
8 in or about December of 2017 and continuing until December 3rd,
9 2019, in this district and elsewhere, that you did willfully and
10 knowingly embezzle, purloin and steal property of the United States,
11 that is, various articles belonging to the United States Military,
12 with a value in excess of \$1,000 with the intent to convert that
13 property to your own use in violation of a law recorded at Title 18
14 of the Code, at 641.

15 And Count Two charged that on or about October 31st of
16 2019, in this district and elsewhere, that you knowingly possessed
17 stolen firearms and they are described in Count Two. That is five
18 Sig Sauer pistols, P 229R, five Sig Sauer pistols, P 239, and seven
19 Remington shotguns, having been shipped and transported in
20 interstate commerce with reasonable cause and knowing to believe the
21 firearms were stolen in violation of another law recorded at Title
22 18 of the Code.

23 And you were put on a notice that the Government would
24 seek to have you forfeit certain property.

25 And just a matter of days after the plea agreement was

1 entered into, it appears you're the subject of a criminal complaint
2 that is, given some detail that I may return to in a moment, with
3 respect to why you did or didn't do what you're alleged to have
4 done.

5 And out of this though, while today was originally set
6 aside as a preliminary examination opportunity as well, the
7 Government's now indicted you and brought that charge into this case
8 by virtue of a superseding indictment that was filed on March 8th.

9 From my cursory review, it looks like Count One and Two
10 are identical. It's Count Three that's the focus of my attention
11 right now.

12 And I read to you Count Three as follows: On or about
13 February 9th of 2022, in the Eastern District of North Carolina and
14 elsewhere, that you, Patrick J. Fedak, did corruptly influence,
15 obstruct and impede and endeavor to influence, obstruct and impede
16 the due administration of justice by dismantling, separating,
17 secreting and burying items of evidence in regard to his theft and
18 possession of stolen government property, to wit, firearms, falling
19 within the various articles described in Count One and specifically
20 alleged in Count Two.

21 This stating a violation of another law recorded at Title
22 18 of the Code at Section 1503.

23 Now, Government, would you put on the record what the
24 punishment is that is possible for this defendant if found guilty.

25 MS. KOCHER: If found guilty of Count Three as charged,

1 Mr. Fedak faces not more than ten years imprisonment under that
2 particular statute, 1503.

3 In addition, your Honor, if convicted -- and because that
4 crime was committed while he was on federal pretrial release, under
5 Title 18, United States Code, Section 3147, Mr. Fedak faces up to
6 ten additional years' imprisonment. And any term under that statute
7 would be served consecutively to any other sentence this Court would
8 impose.

9 There would, in addition, for conviction under 1503, be a
10 fine not to exceed \$250,000 or both fine and imprisonment.

11 No more than three years supervised release and up to two
12 additional years of imprisonment should that term ever be revoked.

13 One hundred dollar special assessment and restitution if
14 applicable.

15 THE COURT: So a very serious matter. And I want to make
16 sure that you understand what you're charged with and the maximum
17 possible punishment and I want to make sure you understand the
18 rights that you have.

19 The right to plead not guilty, to persist in that plea.
20 The burden is on the shoulders of the Government to prove you guilty
21 beyond a reasonable doubt.

22 As you know, the way the Government would go about
23 proving its case is by calling witnesses to the witness stand and
24 you or your attorney would have the right to ask those people
25 questions.

1 You've also got the right, as you know, to make people
2 come into this courtroom pursuant to subpoena powers to provide
3 testimony in support of your defense.

4 And finally, sir, you've got the right to take the
5 witness stand, but you don't have to. And it's something important
6 that I want to emphasize in this proceeding. You have the right to
7 remain silent, but if you do decide to talk, whatever you say may be
8 used against you.

9 In a trial, you don't have to prove anything, as I've
10 just informed you, but you do have the right to take the witness
11 stand, but that's only if you wish.

12 And if you decide not to, in other words, if you decide
13 to exercise that right you've got to remain silent, no suspicion of
14 your guilt, I would tell the jury, is allowed to be drawn from your
15 decision to exercise that right.

16 Now, you've got a right to be represented by an attorney
17 at every point in this proceeding.

18 And the criminal complaint suggests that you buried the
19 guns in the woods because you understood that's what you were
20 supposed to do. You understood that from your former counsel, who
21 quite appropriately, made a motion to withdraw, which was recently
22 heard in Wilmington before the Magistrate Judge.

23 So does your client understand everything I've explained
24 to him, all his rights and what he's charged with?

25 MS. PEREIRA: I believe he does, your Honor.

1 THE COURT: Okay. Mr. Fedak, do you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. Do you have any questions of this
4 Court? You can go through your attorney before you ask them.

5 THE DEFENDANT: I do not.

6 MS. PEREIRA: No.

7 THE COURT: Is there anything further either side wants
8 me to cover in the context of the initial appearance?

9 MS. PEREIRA: No, thank you, your Honor.

10 THE COURT: Okay. So the probation office believes the
11 Court can craft a set of release conditions, despite the allegations
12 here concerning his activity while on pretrial release, that will
13 assure that he will show up for court and not harm others and not
14 interfere with or obstruct justice going forward.

15 What does the Government think? Do you think I can craft
16 something that would provide those assurances?

17 MS. KOCHER: The Government does not think that to be the
18 case, your Honor.

19 And with respect to the probation office, first, the case
20 I believe falls within a rebuttable presumption under Title 18,
21 United States Code 3148. That is to say, this crime is alleged to
22 have been committed while he was on pretrial release. It involved
23 the obstruction of justice. And 3148 specifically calls that to a
24 rebuttable presumption.

25 The Government is willing and ready to proceed by proffer

1 in this case if that is of assistance to the Court.

2 THE COURT: Well, I suppose it really turns on whether
3 defense counsel wants the opportunity to cross-examine anybody that
4 might be here.

5 How would you like to proceed?

6 MS. PEREIRA: Your Honor, well, first of all, we are
7 prepared to rebut the presumption with a third-party custodian. So
8 as an initial matter, we do have a witness available for that
9 purpose today.

10 THE COURT: Okay.

11 MS. PEREIRA: And then we would prefer any Government
12 witnesses be called and subject to cross-examination.

13 THE COURT: All right. I can appreciate that.

14 Well, Ms. Kocher. Would you like to call your first
15 witness?

16 MS. KOCHER: Yes, your Honor.

17 The Government calls Naval Criminal Investigative Service
18 Special Agent Peter Salomon.

19 THE COURT: Okay. Just so everyone, both in this hearing
20 and going forward in the next, if we're speaking through the masks
21 -- and I'm going to tell the witness, you can take yours off if
22 you're comfortable -- and I think he already is -- stay seated and
23 keep the microphone right in front of you and your voice will be
24 sufficiently amplified even though you're speaking through a
25 barrier. It's better not to stand up with a mask on and try to

1 project. I know it goes against the grain, but I want to invite
2 everybody to stay seated and just -- we have learned over time,
3 keeping that microphone directly in front of you is very important.

4 All right. I interrupted the clerk. I invite her now to
5 administer the oath.

6 THE CLERK: If you would please raise your right hand and
7 state your name.

8 THE WITNESS: Peter Salomon.

9 THE CLERK: Please spell your name.

10 THE WITNESS: P-E-T-E-R S-A-L-O-M-O-N.

11 **NCIS SPECIAL AGENT PETER SALOMON**

12 having been duly sworn, testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Thank you.

15 MS. KOCHER: Your Honor, may I approach?

16 THE COURT: Certainly.

17 (Attorney Kocher providing documents to the deputy clerk)

18 MS. KOCHER: My apologies. With the late change in
19 location, I did not have an electronic --

20 THE COURT: Well, I'm just complimentary to both sides
21 being able to turn your cars around and come here instead.

22 MS. KOCHER: What I have handed to the Court are
23 Government's Exhibits marked 1 through 6 with some sub pages therein
24 marked additionally.

25 ///

DIRECT EXAMINATION

BY MS. KOCHER:

Q. Agent Salomon, what do you do for a living?

A. I'm a Special Agent with the Naval Criminal Investigative Service.

Q. And how long have you done that?

A. Since January 2019.

Q. And what is your current assignment, sir?

A. I'm currently assigned to Marine Corps Air Station Cherry Point in North Carolina.

Q. Can you tell the Court who Patrick Fedak is.

A. Patrick Fedak --

THE COURT REPORTER: Could I ask you to please sit closer to the microphone.

Thank you.

A. Patrick Fedak is a former Marine, enlisted initially in 2001. Ultimately became a supply officer. And then from there, we opened an investigation.

Q. (By Ms. Kocher) All right. What does a supply officer do?

A. A supply officer is responsible for handling inventory and warehouses, items coming and going pertaining to different squadrons within the Marine Corps.

Q. All right. And what was the predication for the investigation you mentioned that had been opened?

1 A. Initially in December of 2019, NCIS received information
2 that there were over \$40,000 of what was initially believed to be
3 M16 rifles that were delivered but never put into inventory.
4 Ultimately it was determined that it was not actually M16 rifles, it
5 was M16 rifle sites.

6 However, there are other discrepancies annotated during
7 that initial investigation prompting the rest of the investigation.

8 Q. All right. In what manner had those approximately
9 \$43,000 of Colt M16 parts requisitioned? How were they ordered?

10 A. They were ordered through a website called GSAXcess.

11 Q. What can you tell us about that?

12 A. GSAXcess is a website where, if an agency has extra items
13 or goods, they're able to look first within their agency for a user
14 for it. If they're unable to find one, they can list the items on
15 GSAXcess, which enables other agencies where people or other
16 entities with access to request the items at no cost, with the
17 exception of transfer, shipping costs, to be reutilized for
18 government purposes.

19 Q. All right. Do members of the public have access to this
20 web site?

21 A. No, it's all government tied.

22 Q. All right. Did Mr. Fedak have access to this web site?

23 A. Yes. Mr. Fedak did have access to this through his role
24 as a supply officer in the Marine Corps.

25 Q. And did he use that in some legitimate fashion?

1 A. Yes. For instance, we know he requested and received
2 work stations on behalf of his squadron.

3 Q. Now, you mentioned that the investigation had revealed
4 anomalies in regard to some of the property transfers; is that
5 correct?

6 A. Yes; that's correct.

7 Q. Let me turn you to what's been marked as Government's
8 Exhibit 1. Can you tell the Court what this is?

9 A. So this is a list or partial list of items requested in
10 GSAXcess or approved by Mr. Fedak. These include weapons such as --
11 different weapons, including handguns and rifles, as well as other
12 items, such as furniture, iPhones, iPads and things of that nature.

13 Q. All right. If I can turn your attention to line 23. Is
14 that, in your review of the list, one of the earliest items that was
15 requisitioned by Mr. Fedak through GSAXcess?

16 A. Yes. It was as early as December of 2017.

17 Q. All right. And if I can turn you to the third page of
18 Exhibit 1 at line 120. What is reflected there?

19 A. Line 120 is a smart phone requisitioned approximately
20 December of 2019.

21 Q. What types of evidence, other than the GSAXcess in regard
22 to these improper transfers, did the investigation uncover?

23 A. There's e-mails, phone calls, shipping records,
24 voicemails and other similar items of significance.

25 Q. All right. Let me turn you to the second page of

1 Exhibit 1 at line 81. What transfer is reflected there?

2 A. This is for a passenger vehicle, which is a Mercedes GLK
3 350.

4 Q. And turning to Government's Exhibit 2, what is that?

5 A. This is a screen from GSAXcess showing the listing for
6 that GLK 350 Mercedes.

7 Q. For the court reporter's purpose, GSAXcess is capital
8 G-S-A-X-c-e-s-s; is that correct?

9 A. Correct.

10 Q. All right. And so this is a screen shot of that website
11 reflecting the offering of that Mercedes?

12 A. Correct. Showing that the item location was with DHS ICE
13 in San Diego, California.

14 Q. Who was offering the Mercedes to any other Government
15 agency?

16 A. Department of Homeland Security Immigrations and Customs
17 Enforcement through point of contact Reginald Kimbrough [phonetic].

18 Q. And do you know, sir, how that Mercedes came into the
19 custody of DHS ICE?

20 A. It was ultimately seized pursuant to one of their
21 investigations from an Antonio Gonzales.

22 Q. And does this posting on GSAXcess list its anticipated
23 value?

24 A. Yes.

25 Q. And what was that?

1 A. Original value was approximately \$38,000. It says fair
2 market value at the time was approximately -- I believe
3 approximately 13,900.

4 THE COURT REPORTER: I didn't hear the last part.

5 THE WITNESS: Approximately 13,900.

6 Q. (By Ms. Kocher) Let me turn your attention, please, to
7 the exhibit marked 2a. What is this document?

8 A. This document is a transfer order for excess personal
9 property specifically tied to the 2010 Mercedes GLK 350. Shows here
10 the ordering agency approval individual was a captain in the -- U.S.
11 Marine Captain Patrick Fedak. Date at 11/22/2019. And under
12 shipping instructions it said, Captain Patrick Fedak is picking up
13 vehicle on a trailer and driving the vehicle on trailer to Cherry
14 Point, North Carolina.

15 Q. And that's in Box 8 of Exhibit 2a?

16 A. Correct.

17 Q. Did this transfer ultimately occur?

18 A. Yes, it did.

19 Q. And is Exhibit 2b a photograph of that Mercedes?

20 A. Yes.

21 Q. Can you tell the Court what information you learned
22 during the investigation about the transfer of this Mercedes between
23 DHS ICE and Captain Fedak?

24 A. Yes. So ultimately Captain Fedak requested leave from
25 Cherry Point and traveled to San Diego, California, where he met an

1 individual who -- they picked this vehicle up on a trailer. Per
2 Immigrations and Customs Enforcement, I believe the individual was
3 Reginald Kimbrough. He took a photo of them loading the vehicle and
4 provided -- the vehicle was driven on to the trailer by them prior
5 to leaving.

6 Q. Do you know where the vehicle was then taken?

7 A. Vehicle from there was -- my understanding it was taken
8 to Arizona prior to being sold.

9 Q. When you said that he -- was there anyone else at that
10 exchange or the taking of that vehicle?

11 A. Yes. Captain Fedak's father.

12 Q. And you mentioned that Fedak had taken leave from Cherry
13 Point. That was personal leave?

14 A. Correct.

15 Q. I also noted that in looking at Government's Exhibit 2a,
16 you mentioned that this was personal property. What did the word
17 "personal" mean to you there?

18 A. Can you repeat that?

19 Q. You had referenced this vehicle as personal property and
20 I'm just asking what you meant in the use of the word "personal" at
21 that point.

22 A. Okay. At this point, it was DHS property to be turned
23 over to the Marine Corps property.

24 Q. All right. Might have been personal property for the
25 purpose of taxes or something to that effect?

1 A. Correct.

2 Q. Did Agent Kimbrough or others with DHS provide any
3 information about contact conversations, e-mails of any sort,
4 regarding the titling of this vehicle?

5 A. Yes.

6 Q. And what were those?

7 A. We received information from California Department of
8 Motor Vehicles showing that Patrick Fedak filed for a lost title
9 pertaining to this vehicle.

10 Q. And that is found at Government's Exhibit 2d?

11 A. Correct.

12 Q. Why would he need to apply for a lost title?

13 A. DHS ultimately did not turn over the title to Captain
14 Fedak when he requested it because they provided -- the receiving
15 agency or government entity had to hold the title so it couldn't be
16 something that went to a person. So in order to use the vehicle or
17 sell the vehicle, you need to have the title associated with it for
18 registration purposes.

19 Q. Do you know if Mr. Fedak was aware that he could not hold
20 personal title to this vehicle?

21 A. I believe so based on the application for duplicate
22 title.

23 Q. No, I'm sorry. Do you know if Mr. Fedak was aware that
24 he was not eligible to hold personal title for this vehicle?

25 A. I believe so.

1 Q. Through his conversations with DHS?

2 A. Yes.

3 Q. Can you tell me, sir, the date this application for a
4 duplicate title was signed? And this, again, is Government's
5 Exhibit 2d.

6 A. Signed by the notary on March 10th, 2020. It shows a
7 signature date for -- another party is March 6th, 2020 and Patrick
8 Fedak shows March 10th, 2020, as well.

9 Q. And I believe you testified that the original
10 investigation began in December of '19.

11 A. Correct.

12 Q. Do you know, sir, if by March 10th of 2020 Mr. Fedak
13 would have been aware of the pending investigation?

14 A. Our understanding is he was notified by his command.

15 Q. Let me turn your attention right to the center of the
16 page above and below the typewritten section for registered owners.
17 What name is presented there?

18 A. Antonio Gonzales.

19 Q. And is that a real person?

20 A. It is the real person who ICE initially seized the
21 vehicle from.

22 Q. And how would one find that information if you know?

23 A. You could do, like, open source checks on vehicle history
24 reports and potentially obtain prior owner vehicle information.

25 Q. If I can turn you to the third page of Government's

1 Exhibit 2d and direct you to paragraph G, statement of facts. What
2 is typewritten there on this application for title?

3 A. This is a statement where Mr. Fedak claims he is
4 currently active duty in the military stationed at Marine Corps Air
5 Station Cherry Point. Claims he purchased the vehicle without a
6 title in November of 2019. Stated the vehicle was inoperable; and
7 that he transported the vehicle via trailer; and that he was able to
8 completely repair the vehicle and he was requesting a new title
9 since he was not in California. And once he received the title, he
10 would retitle the vehicle and register the vehicle to his home of
11 record or duty station.

12 Q. And Government's Exhibit 2e.

13 A. 2e is a copy of the title that he received ultimately
14 showing the registered owner as Patrick James Fedak and his prior
15 address at 1205 Skipjack Court in New Bern, North Carolina.

16 Q. Following receipt of this title, do you know what Mr.
17 Fedak did with it, the vehicle?

18 A. The vehicle was ultimately sold and profits were used to
19 personally benefit Patrick Fedak.

20 Q. Let me turn your attention then to a second specific
21 example.

22 A number of pistols and firearms were noted there on the
23 list found in Government's Exhibit 1. Let me turn your attention
24 then to Government's Exhibit 3. What is that?

25 A. So this is a transfer order for excess personal property

1 for 17 firearms from Department of Treasury in Washington D.C.

2 Q. And who requested this transfer of firearms?

3 A. This was requested by Patrick Fedak.

4 Q. Are these actually the firearms mentioned in Count Two of
5 the indictment?

6 A. Yes.

7 Q. That is, it's five Sig Sauer P229Rs, five Sig Sauer P239s
8 and a number of Remington 870 shotguns; is that correct?

9 A. Correct.

10 Q. What is a Remington 870, Agent Salomon, if you know?

11 A. It's a pump action shotgun.

12 Q. Was there anything special about at least two of those
13 Remington 870s?

14 A. Yes. Some of the Remington 870s had a short barrel,
15 which in many states it would be a class three item.

16 Q. Which means what?

17 A. It means that it would require a special registration
18 with the ATF and then also having an associate tax stamp.

19 Q. Do you know how Mr. Fedak received these firearms?

20 A. Yes. A special agent from the Department of Treasury
21 named Special Agent Cloaks drove the items from D.C. to Marine Corps
22 Air Station Cherry Point and hand delivered them to Patrick Fedak.

23 Q. And let me turn your attention to Government's Exhibit
24 No. 3a. What is that?

25 A. Special Agent Cloaks had Mr. Fedak sign for every single

1 firearm by serial number, that he received them; and this is a copy
2 of that document that Special Agent Cloaks obtained.

3 Q. Now, did Special Agent Cloaks know Mr. Fedak prior to the
4 delivery of these firearms?

5 A. He did not know him personally, but they had exchanged
6 e-mails, phone calls and I believe a few -- there was a prior
7 shipment.

8 Q. And is there any evidence that Mr. Cloaks was able to
9 affirm Mr. Fedak's identity upon the delivery of those guns?

10 A. Yes. There was both phone calls -- a phone call to Mr.
11 Fedak as well as Special Agent Cloaks remembered Fedak being on his
12 name tape on his Marine Corps uniform.

13 Q. Did it -- can you say whether or not you're aware that it
14 ever occurred to Agent Cloaks or strike him as curious that the
15 Marines would be ordering excess weapons from the Department of
16 Treasury?

17 A. It may have been something he found a little bit unusual,
18 but ultimately someone with access and approval, he went ahead and
19 did it and made sure he obtained signed documentation that he turned
20 over the weapons to the requesting party.

21 Q. All right. So as the Court earlier noted, a plea
22 agreement was entered into with Mr. Fedak. Had you anticipated --
23 I'm sorry, strike that.

24 By the end of February, Agent Salomon, had you been able
25 to recover any of the firearms listed in Government's Exhibit 1?

1 A. Yes. We recovered four firearms prior to February.

2 Q. And overall, there's more than 60 firearms that were
3 obtained by Mr. Fedak and listed on Exhibit 1?

4 A. Correct.

5 Q. So then let me turn your attention to more recent events.
6 You received a tip regarding some conduct of Mr. Fedak;
7 is that right?

8 A. Yes.

9 Q. And what did that tip inform you?

10 A. The tip informed us that there was possibly weapons
11 pertaining to this investigation buried off of Vandalia Road in
12 Greensboro, North Carolina.

13 Q. All right. And as part of then that follow-up, you went
14 to a business located in Greensboro; is that correct?

15 A. Correct.

16 Q. And what business was that?

17 A. DBJ Corporation.

18 Q. Let me turn you to Government's Exhibit 4. What is that?

19 A. This is a screen shot of surveillance footage obtained
20 from DBJ Corporation. The back corner near the rear trailer, you
21 can see an individual at the back of the truck bed of a silver F150.
22 That person we identified as Patrick Fedak, as well as that being
23 Patrick Fedak's vehicle.

24 Q. Now, from the entire video, could you tell what Mr. Fedak
25 was doing?

1 A. He was going in and out of the trailer. Moving things in
2 and out periodically for approximately an hour.

3 Q. Let me turn your attention to Government's Exhibit 5a.
4 What is that?

5 A. Can you repeat the exhibit number?

6 Q. 5a.

7 A. So this is surveillance footage from DBJ Corporation at
8 the front of the business --

9 Q. I apologize. 4a. Yes, that was my bad.

10 A. NCIS obtained permission to search the trailers at DBJ
11 Corporation. This is a photo taken outside the trailer that in the
12 previous screen shot saw Mr. Fedak's truck parked next to and him
13 going in and out of.

14 Q. All right. And turning to Government's Exhibit 4b.

15 A. This is photograph taken inside the trailer showing
16 miscellaneous pipe parts, shelves and how the trailer was situated.

17 Q. And Government's Exhibit 4c.

18 A. This is a shelf showing a heavy-duty, moving-type blanket
19 as well as some pipe fittings that underneath of which we ultimately
20 discovered two Remington 870 short shotgun barrels, multiple springs
21 and other components in a black Pelican case.

22 THE COURT REPORTER: What kind of case?

23 THE WITNESS: A black Pelican case.

24 Q. (By Ms. Kocher) And is that, in part, what is reflected
25 in Government's Exhibit 5d?

1 A. Yes.

2 THE COURT: 4d.

3 MS. KOCHER: 4d. Yes, your Honor. Thank you.

4 Q. (By Ms. Kocher) I'm sorry, I didn't catch your answer.

5 A. Yes.

6 Q. Let me turn you now to 4e. What is that?

7 A. So inside the black Pelican case we located various
8 weapon slides, barrels and recoil springs to include two Glock
9 slides that contained serial numbers NGH 206 and GSN 732
10 specifically.

11 THE COURT REPORTER: Please repeat the serial numbers.

12 THE WITNESS: NGH 206 and GSN 732.

13 A. That ultimately were on the list of weapons that had been
14 stolen.

15 Q. (By Ms. Kocher) All right. Turning to Government's
16 Exhibit 5. What does that reflect?

17 A. This depicts Mr. Fedak moving something from the bed of
18 his pickup truck to the front passenger seat of a DBJ Corporation
19 vehicle. Annotated that that is the vehicle that has a black rack
20 on that truck.

21 Q. And is the date and time stamp to your knowledge correct
22 that's there on Government's Exhibit 5?

23 A. Yes.

24 Q. And what does it reflect?

25 A. It reflected February 9th, 2022, approximately 1:28:04

1 p.m.

2 Q. And turning to Government's Exhibit 5a, what is that?

3 A. This is a vehicle GPS data report. DBJ Corporation keeps
4 GPS data on their vehicles and this is the detailed report for the
5 vehicle with the black rack -- referred to as the black rack truck.

6 Q. And specifically turning your attention then to the third
7 page of this exhibit, I would note that this summary and these
8 several pages is for the date of February 9th of 2022; is that
9 correct?

10 A. That's correct.

11 Q. So turning to page 3, is there -- are there entries of
12 particular relevance for the Court's review?

13 A. Yes. We annotated 118 East Vandalia Road in Greensboro,
14 North Carolina, as a location of interest because we identified Mr.
15 Fedak had no reason to be there for his work or work duties.

16 Q. All right. And remind the Court, the tip you had
17 received was that he had buried firearms where?

18 A. Off of Vandalia Road in Greensboro, North Carolina.

19 Q. Let me turn your attention to Government's Exhibit 7.
20 And before I discuss that particular exhibit, after -- at this point
21 in time, with the GPS data, what step did you next take?

22 THE COURT: Did you mean 6?

23 MS. KOCHER: I did, your Honor.

24 THE COURT: Okay.

25 A. After receiving the GPS data, we went out to the location

1 to conduct a search on multiple dates.

2 Q. (By Ms. Kocher) And what, if anything, did you find?

3 A. Ultimately I located a spot where I could see mud on top
4 of leaves and also some ground that appeared to have been disturbed.

5 As you can see Exhibit 6, this is post-initial --
6 starting digging. We utilized a metal detector over the area and
7 got hits followed by starting to dig; and ultimately we uncovered
8 nine lower receivers to weapons as well as some other parts with
9 serial numbers that matched items from the list of stolen weapons.

10 Q. All right. And just looking quickly through Government's
11 6a, 6b and 6c, is that what you've just described for the Court?

12 A. Correct.

13 Q. And 6c reflects all nine firearms that were recovered
14 there in the dirt on that day; is that correct?

15 A. Yes.

16 Q. Those nine then bring the total at that time to 13
17 firearms of more than 60 recovered; is that correct?

18 A. Of more than 60 that were stolen, yes.

19 Q. And since Mr. Fedak was arrested, have additional
20 firearms been recovered?

21 A. Yes. Another six firearms have been recovered.

22 Q. So in all, 19 of more than 60 have been recovered; is
23 that correct?

24 A. Correct.

25 Q. And at this time, do you have any leads or information to

1 pursue as to those additional missing firearms?

2 A. We do have some possible information we're looking into.

3 Q. And does that information -- is it as broad as the
4 remaining more than 40 firearms?

5 A. Yes.

6 MS. KOCHER: No further questions, your Honor.

7 THE COURT: Before I invite the defendant to make
8 inquiry, let me just make sure I understand from the witness's
9 testimony the six that were recovered, do the circumstances of their
10 recovery return you back to the woods or any association with the
11 defendant?

12 THE WITNESS: They were from an individual who knew the
13 defendant.

14 THE COURT: From an individual who knew the defendant.

15 THE WITNESS: Yes.

16 MS. KOCHER: If the identity is known, sir, you can
17 inform the Court.

18 THE WITNESS: Okay. Patrick Fedak's father.

19 THE COURT: Okay. Questions?

20 MS. PEREIRA: Thank you, your Honor.

21 **CROSS-EXAMINATION**

22 BY MS. PEREIRA:

23 Q. Good morning, Special Agent.

24 A. Good morning.

25 Q. Everything that you testified to about the Mercedes and

1 then the listing of the firearms, to include those with the agent
2 from the Department of Treasury, all relate to Counts One and Two;
3 is that correct?

4 A. Correct.

5 Q. And Counts One and Two are those two counts that -- for
6 which Mr. Fedak was indicted in December of 2020?

7 A. Correct.

8 Q. Those have not changed or been expanded at all since that
9 time?

10 A. No.

11 Q. So the evidence that you testified to remains static as
12 to Counts One and Two?

13 A. Pertaining to the vehicle and weapons?

14 Q. Yes, sir.

15 A. Yes.

16 Q. And then the information that you testified to about the
17 tip you received and then the metal detector, those are all weapons
18 that were part of Counts One and Two, correct?

19 A. Correct.

20 Q. You were able to determine by serial number that they
21 related to the evidence for Counts One and Two?

22 A. Yes.

23 Q. They were not additional weapons expanding the
24 investigation in any way?

25 A. They were not new weapons from the initial list.

1 Q. Okay. Thank you.

2 MS. PEREIRA: May I have a moment, your Honor?

3 (Attorney Pereira conferring with the defendant at counsel table
4 briefly off the record)

5 Q. (By Ms. Pereira) Special Agent, is it your understanding
6 that on this date in early February that that was after Mr. Fedak
7 had entered into a plea agreement and was intending on pleading
8 guilty to Count One?

9 A. Yes.

10 MS. PEREIRA: No further questions.

11 THE COURT: All right. Thank you.

12 You can step down. Thank you very much.

13 (Witness Excused)

14 THE COURT: Any further evidence from the Government?

15 MS. KOCHER: No further evidence, your Honor.

16 THE COURT: All right. Let's turn our attention to the
17 defendant. I believe you have someone you would like to suggest as
18 a third-party custodian.

19 MS. PEREIRA: Yes, your Honor. Thank you.

20 At this time we'd like to call Mr. Matthew Chambers.

21 THE COURT: Okay. And do watch your step when you come
22 on to the red carpet.

23 THE CLERK: You may come forward and go ahead and have a
24 seat.

25 THE COURT: Good morning.

1 THE WITNESS: Good morning.

2 THE CLERK: Once you're seated, if you feel comfortable,
3 you can remove your mask.

4 THE WITNESS: Thank you.

5 THE CLERK: Please state and spell your name.

6 THE WITNESS: Matthew Darrell Chambers. M-A-T-T-H-E-W
7 D-A-R-R-E-L-L C-H-A-M-B-E-R-S.

8 **MATTHEW DARRELL CHAMBERS**

9 having been duly sworn, testified as follows:

10 THE WITNESS: I do.

11 **DIRECT EXAMINATION**

12 BY MS. PEREIRA:

13 Q. Good morning, Mr. Chambers.

14 A. Good morning.

15 Q. Mr. Chambers, how do you know Mr. Fedak?

16 A. He brought in a piece of equipment to my shop, ACE
17 Hardware, on West Market Street in Greensboro. It was a
18 four-wheeler for his kid, he needed it fixed. That was about a
19 month, month and a half ago I believe. Fixed it for him. Called
20 him and we got along. Both service members. That's how we met.

21 Q. What branch did you -- what were your dates of service
22 and branch, please.

23 A. Started in November 20th, '06. Got out in '14.

24 Q. And what city and state do you live in?

25 A. Greensboro, North Carolina.

1 Q. And so basically you struck up a friendship with Mr.
2 Fedak, would that be correct?

3 A. We did, yes.

4 THE COURT: But you've only been friends for 30 to
5 45 days?

6 THE WITNESS: Correct; yes, ma'am.

7 THE COURT: Okay.

8 Q. (By Ms. Pereira) And what is your employment?

9 A. I run a d/b/a from one of my dad's businesses that he
10 started 50 years ago. The ACE Hardware on West Market. First
11 started out as an experiment, but it is the Valor Active group,
12 Valor Active Outdoor Power Equipment.

13 We do a lot for disabled veterans and disabled civilians.
14 We fund it through fixing power equipment and using the skills we
15 have to reach out and find the people who have fallen through the
16 cracks and see if there's anything we can do for them. It's a lot
17 but we do a lot. It's a full-time job.

18 Q. Through your friendship, I'm sure you and Mr. Fedak
19 talked about his time in the military as well and some of the
20 struggles he's had since.

21 A. We did. I'm learning a lot today.

22 Q. Now, I previously explained to you the responsibilities
23 of a third-party custodian. Do you understand that if the Judge
24 were to release Mr. Fedak into your custody, it would be your
25 responsibility to do your best to be aware of his compliance with

1 the Court's conditions?

2 A. I do. And --

3 Q. Is that something that you're --

4 A. -- if it pleases the Court, I'd like to actually shed a
5 little light more on that.

6 THE COURT: Okay.

7 A. I have a wide network in Greensboro. A lot of veterans.
8 Some on the SWAT Team, some investigators in the department. I've
9 asked their advice. Even a local Navy Seal, we're close friends.
10 I've informed them everything I know about this case. And not one
11 of them wanted to be here today, could not.

12 Q. Now, everything that you know about this case is from
13 public source knowledge; is that correct?

14 A. Off of what is available on the Internet. Yes.

15 Q. But given what you know, you still wish to proceed and be
16 Mr. Fedak's third-party custodian; is that correct?

17 A. In all candor, I would like to talk to him before making
18 that decision. (Indicating).

19 THE COURT: Because you said you've learned a lot today.

20 THE WITNESS: Yes, ma'am. I still feel that he is
21 tenable. What he's shown me in work and in character does not fit
22 what I've seen today. Nothing truly shocks me, but it's
23 interesting. It's a lot of information to make a decision right
24 this second on. That's part of valor. You do embrace that danger
25 with firmness. That is the definition of it, but that does not mean

1 running into a derelict building on fire to save cockroaches.

2 I experienced a lot of fraud, waste and abuse in my time
3 and that's partially what got me out. I've been a part of units
4 sent there to stand them up, lift them up and those were untenable
5 units.

6 Q. (By Ms. Pereira) What you know about Mr. Fedak
7 personally from your time knowing him gives you the confidence to
8 proceed --

9 A. I'll pick him up and carry him on. I'll look after him.

10 Q. And you'll make sure he gets to court appearances?

11 A. Absolutely.

12 Q. And if he were to violate any of the conditions that the
13 Judge were to set for him, it would be your responsibility to turn
14 him in. Is that something you would do?

15 A. Too easy.

16 Q. Is that yes?

17 A. Yes, ma'am.

18 Q. Okay. And if the Court were to order electronic
19 monitoring for him, is that something that you would be amenable to?

20 A. Absolutely.

21 THE COURT: So, counsel, you're proposing -- and I assume
22 that the witness is agreeing -- that your client would live with
23 him?

24 MS. PEREIRA: Yes, your Honor.

25 THE WITNESS: Yes, ma'am. I have a plan for that if you

1 want to hear it.

2 THE COURT: Okay.

3 THE WITNESS: So tonight, if he were to be released --
4 I've spoken with his brother, Brendan Fedak -- we're going to put
5 him in a hotel. I'll be there with him for two nights.

6 I've arranged for West Market Station right up the street
7 from our work -- because I don't know about transportation, if he
8 has a license. Rent -- I'll be there with you. It's a two bedroom,
9 two bath on site. And I do prefer the GPS. If not, I'll do it
10 myself.

11 THE COURT: So you would live in a --

12 THE WITNESS: Apartment, two bedroom. It is available
13 the 10th, today.

14 THE COURT: And this disrupts your current living
15 environment?

16 THE WITNESS: Not at all.

17 THE COURT: No?

18 THE WITNESS: Not at all.

19 THE COURT: Okay.

20 THE WITNESS: I'm very fortunate. My dad's a veteran and
21 our family is going through a lot right now. So the 3602
22 Tattershall address, not going to be -- not okay. Mom has some
23 health issues that are new so I'm not going to -- not going to put
24 that together.

25 I do stay sometimes above the hardware store. We have a

1 small apartment up there and it does help with on site security. So
2 that's -- my home of record is 3602 Tattershall, but I stay above
3 the hardware store.

4 Q. (By Ms. Pereira) And would Mr. Fedak be able to work
5 with you and would you expect him to do so?

6 A. I would expect him to do so.

7 THE COURT: In the hardware business?

8 THE WITNESS: Yes. We have a parts shop. We sell a lot
9 of outdoor power equipment parts, Stihl dealership, S-T-I-H-L.
10 Parts for everything. We can get anything. We're an ACE Hardware.

11 And we're going to liquidate in 30 days if I cannot buy
12 it and his skill set is what I need to make it possible with the
13 angel investor. I've already turned down a lot of money because
14 they were greedy.

15 Q. (By Ms. Pereira) And at your home and at your business
16 there are no firearms; is that correct?

17 A. No, ma'am.

18 Q. And you do not allow illegal drugs, correct?

19 A. No, ma'am. I don't even drink anymore.

20 Q. That brings me, do you have any type of criminal record
21 yourself?

22 A. Yes. Yeah, I had a DUI when I moved back from St. Thomas
23 after the military. And then the last girl I was dating, there was
24 an issue there. So there's a 50B, which I willfully did not fight.
25 Any charges involved with that were dismissed. I just know to stay

1 away from nail technicians and hair dressers and alcohol. Alcohol
2 does not mix with PTSD.

3 Q. So you're sober?

4 A. Absolutely. Yes, ma'am.

5 Q. And to the extent that you could, if Mr. Fedak required
6 any services through the VA in Greensboro, would you assist him in
7 helping --

8 A. Absolutely. That's already been started just in case.

9 Q. And so is it your testimony today that you would like --
10 that you are offering to be his third-party custodian understanding
11 the responsibilities and obligations you would have to this Court
12 and doing that for Mr. Fedak?

13 A. I would prefer to talk to this investigator, this
14 Marine -- thank you for your service -- be for making that choice.
15 But I think that's impossible, so with that -- if that's impossible,
16 the answer is yes, I would --

17 THE COURT: I don't know if it's impossible. I haven't
18 really made a call on that. But what you're saying is you have some
19 questions that you would like to ask the investigator about the
20 defendant before you make a final decision?

21 THE WITNESS: If it pleases the Court, may I present a
22 couple of them to him or pass the word what the questions are?

23 THE COURT: Well, I -- I would ask defense counsel, how
24 do you suggest this proceed?

25 MS. PEREIRA: Well, honestly, your Honor, this is kind of

1 a first. And so I think at this point it might be best if we
2 request a brief recess and allow him to speak off the record and
3 whatever the agent feels he can offer him.

4 And then when we would return from a brief recess, we'd
5 be able to either persist in putting Mr. Chambers as a third-party
6 custodian or at that point, if necessary, I would withdraw him.

7 THE COURT: I think that's a very reasonable approach.

8 THE WITNESS: Thank you.

9 THE COURT: Let me ask though before that's decided on,
10 if the Government would agree to that?

11 MS. KOCHER: To taking a recess and allowing the witness
12 to ask the agent questions? With the caveat that -- obviously the
13 agent will do what he can, but there would be limitations on what
14 could be shared.

15 THE WITNESS: Understood. Yes, ma'am.

16 THE COURT: Do you want a conference room available to
17 you for this purpose?

18 MS. KOCHER: I think that the room across the hall there,
19 your Honor, would be fine for this purpose.

20 THE COURT: All right. Well, let's take a 10-minute
21 recess. Would that meet the needs?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Okay. Ten-minute recess.

24 (Recess commencing at 10:32 a.m.)

25 (The defendant, Patrick Fedak, escorted out of the courtroom at

1 10:34 a.m. and returned to the courtroom at 10:38 a.m.)

2 (The witness, Matthew Darrell Chambers, resuming the witness stand
3 at 10:38 a.m.)

4 (Conclusion of recess at 10:48 a.m.)

5 (Open Court at 10:48 a.m.)

6 THE COURT: So do you continue to offer the witness as
7 your third-party custodian?

8 MS. PEREIRA: Yes, your Honor. And I do want to thank
9 the Court for its indulgence. I would like to continue to present
10 Mr. Chambers as a third-party custodian to the Court.

11 THE COURT: Okay.

12 MS. PEREIRA: May I proceed?

13 THE COURT: Certainly.

14 MS. PEREIRA: Thank you.

15 Q. (By Ms. Pereira) Mr. Chambers, after speaking with the
16 special agent in this case, is it still your desire to serve as a
17 third-party custodian for this Court for Mr. Fedak?

18 A. Yes, ma'am.

19 Q. Thank you.

20 MS. PEREIRA: I have no further questions.

21 THE COURT: Okay. Ms. Kocher.

22 **CROSS-EXAMINATION**

23 BY MS. KOCHER:

24 Q. Mr. Chambers, what is your main motivation in offering
25 yourself as a third-party custodian for Mr. Fedak?

1 A. He's alone. He's abandoned. Seems as though he's made a
2 mistake, maybe a few. I've lost four brothers, platoon members, in
3 not exact situations; but it's when men like this are abandoned by
4 family, country, home, that's when he becomes a statistic of 22 a
5 day. That's number one.

6 Number two, I need him in the store. I need him in that
7 inventory to get this parts side on line so that I can accomplish a
8 goal to help other veterans.

9 Number three, his character. From what I've experienced
10 working with him, that was the tipper.

11 THE WITNESS: Based off what I've discussed with the
12 investigator, not looking so good, bud, but you're still tenable.
13 You're still worthy of defending.

14 A. I hope that answers your question, ma'am.

15 Q. (By Ms. Kocher) It does. Just more specifically as to
16 the first one, you mentioned the word statistic. Were you
17 referencing there self harm?

18 A. I'm referencing the suicides of veterans. Yes, ma'am.

19 Q. And is there any specific evidence or information you
20 have that Mr. Fedak is of concern in that regard?

21 A. He fits abandoned, he fits PTSD. Excuse me, I don't know
22 if I'm allowed to share that. I don't know if HIPAA is -- and gut
23 instinct. I'm an incredible judge of character. I know when he's
24 lied to me. I can tell you exactly when. You don't become a senior
25 scout observer in the United States Army by being a terrible judge

1 of character.

2 Q. Thank you, sir. No further questions.

3 A. Yes, ma'am.

4 MS. KOCHER: No further questions, your Honor.

5 THE COURT: Okay.

6 MS. PEREIRA: No follow-up, your Honor. Thank you.

7 THE COURT: Do you have any guns in your home?

8 THE WITNESS: No, ma'am.

9 THE COURT: All right. Thank you very much.

10 THE WITNESS: Yes, ma'am.

11 MS. PEREIRA: No further questions and no further
12 witnesses.

13 THE COURT: You're done? Okay.

14 (Witness Excused)

15 THE COURT: So I don't think I need a crystal ball to
16 know that I'm not going to be presiding over a change of plea on
17 March 16th, am I?

18 MS. KOCHER: It would not be the Government's
19 expectation, your Honor.

20 MS. PEREIRA: After consultation with Ms. Brennan, I
21 believe that she will require a little bit more time to assess all
22 of the evidence and meet with Mr. Fedak to determine how he would
23 like to proceed with his superseding indictment.

24 THE COURT: So shall we just take that off the court
25 calendar now for planning purposes so no one has to make a motion to

1 continue?

2 MS. KOCHER: I would make that oral motion now, your
3 Honor. Thank you.

4 MS. PEREIRA: No objection and we would consent to it.

5 THE COURT: It can always come back on.

6 MS. PEREIRA: I'll let Ms. Brennan know.

7 THE COURT: Okay. Sorry we didn't have her here today,
8 but thank you for being here.

9 Okay. Would who would like to be heard first in
10 argument?

11 Do you want to go first, Ms. Kocher?

12 MS. KOCHER: Your Honor, the --

13 THE COURT: And I know it's -- taking your mask off?

14 MS. KOCHER: I am eligible for that, yes, your Honor.

15 THE COURT: All right.

16 MS. KOCHER: It is certainly, I believe as Ms. Pereira
17 said earlier, a first in a long career of my own.

18 The obstruction in this case is significant particularly
19 given the posture, particularly because it included allegations of
20 wrongdoing by a member of the Bar, the Government believes without
21 cause, but that would be for another day.

22 The obstruction of justice in this case, the hiding of
23 firearms, secreting them, separating them so that they weren't even
24 found in the same location is of significance. And the evidence
25 that your Honor would consider for the purpose of a detention is

1 very strong in that regard.

2 There are -- and one of the Government's biggest
3 concerns, both as to the third-party custodian's number one concern
4 that he mentioned, and as the prosecutor in the case, are the
5 outstanding 40 firearms. We don't know where they are, we have some
6 leads as the agent testified that we can pursue, but it is not as if
7 someone has those and we're ready to go pick them up, you know,
8 immediately. That's of grave concern.

9 The fact that Mr. Fedak has been living a lie throughout
10 the entire process, I would point out -- I don't recall if the
11 motion to revoke pretrial release also pointed out the fact that
12 he's apparently been possessing firearms throughout the pretrial
13 release. So while it's minor compared to the obstruction, just the
14 flat out, never from the beginning -- even had the plea gone
15 forward -- apparently never from the beginning of his pretrial
16 release did he intend to comply with that particular portion of it,
17 that is, that he not possess firearms. He's had --

18 THE COURT: Can you illuminate the circumstances? I do
19 note under, additional conditions of release, it was imposed there
20 shall be no firearms, destructive devices or other weapons in
21 defendant's residence, including the residence of any third-party
22 custodian.

23 Could you elaborate on the possession of unrelated
24 firearms in violation of that release condition?

25 MS. KOCHER: I'm not saying unrelated firearms. I'm just

1 saying that *res ipsa loquitur*, the fact that he buried firearms
2 shows that he had possession of those firearms.

3 THE COURT: Okay.

4 MS. KOCHER: So whether the plea had gone forward as
5 scheduled at the end of February or not, he was in contradiction to
6 the terms of his release all along.

7 THE COURT: Where does the interpretation of the lawyer's
8 advice to put the firearms in the woods come into your argument?

9 MS. KOCHER: There is more information, your Honor, that
10 was provided giving more details not only to that portion of the
11 obstruction charge, but as to other events as well that accused a
12 number of other persons of wrongdoing who were interviewed by this
13 agent and other agents prior to this point that have no connection
14 to the underlying event thereby casting doubt on all of that which
15 was said in that day.

16 I also personally know the attorney at issue. Have
17 talked with him at length and nothing coming from that attorney to
18 me -- by the way, there was no violation of any attorney/client
19 privilege. Knowing the falsehoods that Mr. Fedak has said, for
20 instance, getting a notary on base, once he knows the investigation
21 is underway, to notarize his signature to apply for the lost title
22 for the Mercedes.

23 All of that combined is part of what's in my head to
24 believe that that was not the case, that there was not attorney
25 advice to bury the guns.

1 In fact, specifically, I believe that what Mr. Fedak said
2 was, well, he didn't tell me outright. He -- you know, basically a
3 wink and a nod type of conversation. And if I'm going to believe
4 one or the other of those individuals, given the histories of them
5 both, unfortunately that falls to Mr. Fedak. That's -- it comes to
6 that.

7 That's something I, as a prosecutor, can do that is not
8 perhaps available to yourself in the neutral role you present.

9 I would say in regard to the third-party custodian, your
10 Honor, the honor and intention of that individual are unsurpassed in
11 my experience. I have no doubt of the good will and good intentions
12 of that individual. I do not think, however, that it assists at
13 this point in time. He was living at the time with a family member,
14 with his wife and children, and if with their support -- I have no
15 idea what his day-to-day life was like, but I'm unaware through any
16 reports by probation that there was difficulty prior to his most
17 recent arrest on the obstruction charges.

18 So I am not convinced that introducing even such a fine
19 example of a third-party custodian, particularly someone who's only
20 known the defendant, as your Honor noted, 30 to 45 days, is
21 sufficient both to prevent the risk of flight -- because now he's
22 got, you know, literally another ten year -- on the statutory
23 maximum with an additional ten-year potential consecutive.

24 The risk of flight has grown. The further obstruction
25 with the 40 outstanding weapons, particularly -- and I think this is

1 a place where the Court can consider the defendant's past history in
2 lying and setting up these transactions, in applying for the title
3 for that vehicle.

4 All of those types of things do go to whether your Honor
5 can trust him now, on a dime literally, to change direction and to
6 change his behavior and now listen to the Court.

7 It is the Government's position that the defendant had
8 the opportunity and literally buried it. And part of that now is
9 that there are no conditions remaining that the Court can set.

10 I would ask at this time, though, just to follow up on
11 the direct examination, to move into evidence Exhibits 1, 2, 2a
12 through 2e, 3, 3a, 4, 4a through e, 5, 5a, 6 and 6a through c.

13 THE COURT: Okay.

14 MS. KOCHER: Thank you, your Honor.

15 THE COURT: Okay. Be happy to hear from you now.

16 MS. PEREIRA: Thank you, your Honor.

17 Your Honor, addressing the Government's concerns about
18 the additional -- perceived additional violation of pretrial release
19 of possessing firearms. I would note that in the original order
20 setting conditions of release, under subsection paragraph K, not
21 possess a firearm, destructive device or other weapons. See page 4
22 if this condition applies. And on page 4 it said, there shall be no
23 firearms, destructive devices or other weapons in defendant's
24 residence, including the residence of any third-party custodian.

25 So I would submit that what we have heard today does not

1 amount to that. And I know it may be somewhat of an academic
2 argument, but I do want to just make sure that we know the universe
3 of what we're discussing as far as any pretrial release.

4 THE COURT: So you're suggesting the Court used a form
5 that opened up the possibility that he could hold the weapon, but
6 not in his home?

7 MS. PEREIRA: The way I read paragraph -- page 4 is that
8 there shall be no firearms in his residence. And we heard no
9 evidence today that there were any firearms in his residence.

10 THE COURT: Well, that is -- is an interpretation that
11 suggests the Court ought to revisit the form work relied on by the
12 magistrate judge if I'm opening the door to letting every defendant
13 get out of court on release and possess a weapon, but not in his
14 home.

15 MS. KOCHER: If I might come to the defense, actually
16 your Honor, both the magistrate judge and Ms. Pereira, who was not
17 present at that time -- it does occur to me that at the time of that
18 initial appearance -- and those conditions were agreed upon between
19 the parties -- Mr. Fedak was still a member of the United States
20 Marines --

21 THE COURT: Oh.

22 MS. KOCHER: -- and we would have, so that he could
23 continue that job, ordered it that way.

24 THE COURT: Okay.

25 MS. KOCHER: So I --

1 THE COURT: Okay.

2 MS. KOCHER: -- did not recall that until this came up
3 and I apologize.

4 THE COURT: All right. That gives me some comfort.

5 MS. PEREIRA: Your Honor, I would like to note that the
6 order of conditions of release that was signed on December 9th,
7 2020, went -- first of all, did not include a third-party custodian.

8 THE COURT: Right.

9 MS. PEREIRA: Did not include electronic monitoring.
10 They were very basic conditions of release. And Mr. Fedak was being
11 supervised out of the Middle District of North Carolina for
12 approximately 14 months until the events unfolded in February of
13 2022. So he does have a history of compliance with very minimal
14 conditions of release.

15 And when looking at 18 U.S. Code, Section 3142, it is not
16 the Court's position to start with detention and then work
17 backwards, but to start with unconditional release and then move --
18 only if that is insufficient to ensure the safety of the community
19 and mitigate against any risk of flight, then move step wise
20 systematically through additional conditions.

21 THE COURT: What do you make of -- you know, I didn't
22 realize this. Is she correct that there's now a rebuttable
23 presumption?

24 MS. PEREIRA: So under 314 -- and this is where -- again,
25 the practice of law can be new every day. If we're here solely for

1 a detention hearing on the superseding indictment, my position would
2 be that this is not a presumption case under 3142. If we are here
3 on a revocation of pretrial release conditions in the former case,
4 then I think we would fall under 3148.

5 Regardless, I do believe that our third-party custodian
6 rebuts the presumption and levels the playing field. So, again,
7 it's somewhat of an academic argument.

8 THE COURT: Okay. Interesting.

9 Well, let me ask everybody -- and I'm throwing into the
10 pot the probation officer -- so he didn't qualify for
11 court-appointed counsel originally; is that correct?

12 MS. PEREIRA: That's my understanding, your Honor.

13 THE COURT: So the lawyer that we're talking about he was
14 paying out of his own pocket, right? Is that correct?

15 MS. KOCHER: That's my understanding.

16 MS. PEREIRA: It was not a CJA appointed attorney.

17 THE COURT: So he's in the Middle District of North
18 Carolina. And is he responsible for paying for his own mental
19 health treatment? Because I'm reading the write up of our probation
20 office urging that while he can be released, but he's got to get
21 medical or psychiatric treatment as directed by the probation
22 office.

23 And I'm looking at the Court's order originally of
24 release and under this section that we've talked a lot about, there
25 shall be -- okay. Come forward.

1 PROBATION OFFICER LUNSMAN: Your Honor, I didn't want --
2 since Rebecca is here as the court services -- I'm here representing
3 Lee Meeks, who's the supervising probation officer.

4 THE COURT: Okay. Take a seat. Great.

5 Let me keep on going just to sort of set up this
6 question. The Magistrate Judge's conditions of release read:
7 Continue participation with current mental health treatment. All
8 right. So that suggests that he was getting mental health
9 treatment.

10 PROBATION OFFICER LUNSMAN: He was eligible for mental
11 health treatment and he had multiple options. One of those options
12 was out of pocket. The other option he was presented would have
13 been provided through the U.S. Probation Office with a contract.

14 As my understanding is, he was directed to discuss that
15 with his probation officer in December and there has been no
16 movement on that since that time.

17 THE COURT: Well, the report that Ms. Perez authored
18 dated March 9th of 2022 says that, Middle District records reflect
19 the defendant allegedly attempted to seek treatment from Military
20 One Source; Guilford Behavioral Health Center; Family Services of
21 Piedmont; and Genesis Mental Health Services in Concord. However,
22 he was unable to secure an appointment.

23 So that conjures up the picture of someone knocking on
24 the door or making phone calls, making attempts and just not being
25 able to get in.

1 PROBATION OFFICER LUNSMAN: My understanding, Military
2 One Source would have required him to pay out of pocket. Those
3 other options were provided to him as alternatives. One of them he
4 would not have been able to get an appointment until this month.
5 And then the other options, he was directed, you know, contact them,
6 secure an appointment and then no follow-up was done.

7 THE COURT: But the onus is on -- so the probation
8 officer isn't working its resources to get an appointment and tell
9 him, this is when you go?

10 PROBATION OFFICER LUNSMAN: Typically, in our district we
11 have one contract provider that we send people to. People are also
12 allowed to pick their own. Middle District may do that a little bit
13 differently. But my understanding is he was directed to set an
14 appointment and had not made one and that's the information that
15 Officer Perez was given.

16 THE COURT: Well, I would just say I kind of like our way
17 of doing it.

18 All right. There's clearly some mental health issues
19 here.

20 MS. PEREIRA: Your Honor, I would draw the Court's
21 attention to the paragraph following what the Court just read from.
22 And without stating it on the record, that there are some medical
23 concerns that Mr. Fedak has, that it is my understanding are not
24 being treated in the custodial setting that he has been in recently.
25 And that is unfortunately, not surprising to me.

1 And I think that would, despite my office's best efforts
2 and the efforts of the United States Marshal Service, I don't
3 believe that those needs would be appropriately met in a detention
4 setting.

5 And so we do think that that would be a factor weighing
6 in favor of his release, to continue seeking and receiving medical
7 and mental health treatment, your Honor.

8 Your Honor, what we heard from the special agent who
9 testified was a lot of evidence pertaining to Counts One and Two and
10 they were not expanded upon; and the reason why I feel that is
11 important for today's purposes is because Counts One and Two were
12 the counts that were against Mr. Fedak in December 2020 when he was
13 released.

14 So all of the evidence that pertains to Counts One and
15 Two existed and the Court found that he could be released on very
16 minimal conditions of supervision. And so really what we have, as
17 far as a change in circumstance, would be Count Three.

18 And then in regards to Count Three, the evidence that was
19 uncovered relates back to Counts One and Two. It does not expand
20 upon Counts One and Two. The serial numbers that were recovered go
21 back to the firearms that were at issue in Counts One and Two.
22 We're not discovering new evidence that would bring in other
23 charges.

24 And so I'm not trying to justify the alleged actions that
25 brought about Count Three, your Honor, but I do believe that when

1 progressing through the conditions available to the Court in 3142,
2 that there are conditions or combinations of conditions that can be
3 set to appropriately and successfully have Mr. Fedak be on release
4 in this case. A third-party custodian, electronic monitoring,
5 curfew, reporting to a probation officer, receiving mental health
6 treatment. And that can be -- understanding the difference in
7 districts, but making sure that the United States Probation Office
8 in the Middle District is ensuring that services are being received,
9 not just sought.

10 And so we do believe that all of these conditions that
11 are available to the Court are sufficient to address any concerns
12 and we would ask that you deny the Government's motion for
13 detention.

14 THE COURT: Okay. Mr. Chambers was asked at the start by
15 Ms. Kocher, what's your interest in this, and he named three
16 reasons. And the second one has your client, I think, counting a
17 lot of hardware parts it sounds like. It's not going to work with
18 Mr. Chambers unless your client is going to help him in the store,
19 it sounds like.

20 Is that your client's understanding, that he's going to
21 turn into Mr. Chambers' unpaid inventory taker?

22 Is that a fair -- I mean, is that what you're wanting him
23 to do?

24 MR. CHAMBERS: There's pay.

25 THE COURT: There's pay. Okay.

1 MR. CHAMBERS: Yes, ma'am.

2 THE COURT: So all right.

3 MS. PEREIRA: Certainly if the Court were to order him to
4 be on 24/7 house arrest and he couldn't have a job, that would be,
5 you know -- that would be something that he would comply with if the
6 Court were to allow him to have a job, then it's great that he has
7 that opportunity available to him to work with his third-party
8 custodian.

9 THE COURT: Because if he's not a good employee, I don't
10 think this is going to work. Do you?

11 MR. CHAMBERS: He's been an incredible employee, your
12 Honor. The employment I think serves him very much.

13 MS. PEREIRA: Your Honor, I think based on Mr. Chambers'
14 testimony, I have no doubt that if the third-party supervisee
15 relationship were to disintegrate, that he would notify the
16 probation forthwith.

17 THE COURT: He leaves me with that confidence that if Mr.
18 Fedak doesn't do what he's supposed to do, that you, Mr. Chambers,
19 would very quickly alert the probation officer.

20 MR. CHAMBERS: Yes, ma'am.

21 THE COURT: Okay. It's a very unusual hearing, isn't it,
22 in so many different ways.

23 All right. So it was two nights in a hotel and then --

24 MR. CHAMBERS: Then the apartment on Chestnut Street --

25 THE COURT: Okay. Any concerns about Mr. Chambers?

1 MS. KOCHER: About Mr. Chambers. I'm sorry.

2 PROBATION OFFICER LUNSMAN: Your Honor, the biggest
3 concern that we would have is if you do impose any kind of location
4 monitoring, not having a residence to set that up is a concern.

5 Also just -- I guess, just to state it, Officer Meeks
6 requested that I notify the Court that his recommendation is
7 detention based on the PS 8 that he filed, which I know is a little
8 bit unique as well in that it's different from the court services
9 side, but he filed the motion requesting the warrant after the new
10 indictment.

11 So since I'm here representing him, I just wanted to make
12 sure I notified the Court of that.

13 THE COURT: Okay. I hadn't processed that. So we have
14 dueling recommendations of your office.

15 PROBATION OFFICER LUNSMAN: A little bit, yes. I know
16 that's a little bit unique.

17 THE COURT: Boy. Yeah.

18 Ms. Kocher, I think you wanted to respond.

19 MS. KOCHER: Just very briefly, your Honor.

20 Just to clarify to the extent necessary, the Government
21 did not originally move for detention. The defendant was a captain
22 in the Marines at the time he was indicted. And with no appreciable
23 criminal history, it is not a case that called for detention. We
24 didn't argue it then.

25 In fact, as I noted earlier, we came up with that list of

1 conditions for his release and he was released at the time of his
2 initial appearance.

3 The nights he spent in the jail, to my knowledge since
4 the complaint and his arrest in this calendar year, are the only
5 nights in regard to this case that he has spent in jail.

6 The nature of an obstruction charge necessarily ties the
7 conduct back to the existing counts. That is not, in my feeble
8 mind, any assistance as to detention or not detention. It is by
9 virtue of an obstruction charge, literally it has to be in regard to
10 a pending proceeding. And it does happen to be so in regard to
11 Counts One and Two.

12 I have two big concerns, your Honor, in regard to a
13 proposed release. First, as you well know, mental health treatment,
14 like substance addiction treatment, can be ordered and a person can
15 be walked into that room and sit there during that process, but the
16 proposition that mental health treatment will help -- and it
17 certainly should be an order of any release plan -- but it does not
18 relieve me of concerns because there has been no -- he's been
19 directed by probation to seek treatment and given places and it
20 appears that there is some conflict in what he has reported to the
21 probation officer about the four, five places that you named off
22 that he sought treatment from and the probation officer's report
23 that, no, actually, he tried one, had to pay out of pocket and never
24 did follow up -- if I understood the probation officer correctly
25 from counsel table here. And so that one greatly concerns me.

1 Finally, your Honor, the other concern I have is there is
2 no ties to Greensboro except, to my understanding, his family from
3 whom he is now estranged. Mr. Chambers used the word "abandoned."
4 It causes me concern that he will be in proximity to them there in
5 Greensboro; and but for the fantastic organization and Mr. Chambers'
6 presentation today, there is no other tie of which I'm aware to
7 Greensboro. He moved there to be with his wife and children.

8 So all of that being said, the Government does persist in
9 its request for detention.

10 THE COURT: Okay. Have I heard from the defendant fully?

11 MS. PEREIRA: Just a couple follow ups, your Honor.

12 I think relating back to the Government's most recent
13 concern of the ties to Greensboro and from the thumbnail sketch of
14 Mr. Fedak's family situation that I have learned in the last
15 24 hours, I think there are some struggles and it is an evolving
16 situation. However, he is a father and that doesn't change. He has
17 two children there.

18 And what we have is an opportunity for him to have a job,
19 to earn a salary and to be able to provide for his children. Under
20 electronic monitoring, his whereabouts would be known to the
21 probation office.

22 And furthermore, with a third-party custodian keeping an
23 eye on him, the Court's order would be supervised by Mr. Chambers
24 and we feel that that is sufficient conditions of release to deny
25 the Government's motion.

1 THE COURT: And, you know, another perhaps unique element
2 to this proceeding is this is a defendant who signed a plea
3 agreement and pleaded guilty to Count One.

4 So the next court event, what, counsel, do you think it
5 should be? A Rule 17.1 conference just to bring everybody together
6 and figure out where this is going with responsible counsel? Would
7 that be the next event?

8 MS. KOCHER: Your Honor, that might actually be a very
9 good thing, yes. Thank you for suggesting it.

10 THE COURT: So perhaps you could, in the next couple of
11 days, both sides could look at their calendars and send to the Court
12 a proposal of a couple of alternative dates and times when you could
13 come to New Bern and where it would make sense -- after a chance to
14 sort of digest the fallout here, come to New Bern and we'll figure
15 out where this case is going and get it through the appropriate
16 scheduling order, if necessary, in effect.

17 MS. KOCHER: Thank you.

18 THE COURT: Okay. So we'll sit tight on that with the
19 understanding that, say, by Tuesday of next week, you'll give me
20 some kind of a notice to that effect. How about that?

21 And I really will be guided by you as to how soon this
22 17.1 conference should be, but I certainly don't want to suggest
23 that I'm not being cognitive of the defendant's right to a speedy
24 trial and the public's right to the same thing. So I'm going to go
25 ahead and exclude the time between now and next Tuesday.

1 And I'm going to understand that in that notice, both
2 sides will come together and suggest to the Court that the time
3 between that notice and the 17.1 conference should also be excluded.
4 Just thinking ahead. Okay.

5 And I'm going to let you go. I'm going to let you go
6 with Mr. Chambers, but I'm going to be watching your performance and
7 I'm going to be seeing you again pretty soon. And if there are any
8 problems, I'm going to be told of that and I can make the
9 appropriate adjustment as to where you go to bed at night if it's
10 necessary.

11 Now, this is kind of a difficult release order to
12 structure because I'm really not sure what address to tell the clerk
13 to fill in here. Because it sounds like it's one place for two
14 nights and then another place for the rest of the time. And, of
15 course, we are going to make sure we know where you are with
16 electronic monitoring and so that's all got to get figured out.

17 And I'm going to let you go to work with Mr. Chambers.
18 And your work schedule is going to need to get figured out.

19 And I'm going to make you start your mental health
20 treatment immediately. And I'm going to be looking for an update
21 from the probation office as to which of these many places he's
22 going to and when his first appointment is. And perhaps that'll be
23 helpful to the Middle District to get that set. Okay.

24 Because you do need mental health treatment. I don't
25 think anybody would think otherwise. And I know you don't think

1 otherwise.

2 So over the Government's objection, the Court will let
3 you go. But let's go back and see what other conditions need to be
4 added to this that weren't already in the original order.

5 I assume the probation office has his passport.

6 PROBATION OFFICER LUNSMAN: Yes. We've collected that,
7 your Honor.

8 THE COURT: So you're not going to be getting any new
9 passport, but that's already a condition. It looks like -- no, it
10 may not already -- it's already a condition, yes.

11 And, Mr. Chambers, you're going to let the probation
12 officer know immediately and so we need to get that address -- that
13 contact information to Mr. Chambers.

14 It's not you, right. It's your --

15 PROBATION OFFICER LUNSMAN: That's right, but I'll meet
16 with him after.

17 I would like to request since we are imposing electronic
18 monitoring, may we have 24 hours to get that installed so the Middle
19 District can figure out where he is and meet with him?

20 THE COURT: And if you need 48 because the hotel -- it's
21 not going to work if you're going to a hotel for two days, you can
22 take 48.

23 PROBATION OFFICER LUNSMAN: Do you have a preference on
24 RF or GPS monitoring? What you would like us to do?

25 THE COURT: You educate me on that.

1 PROBATION OFFICER LUNSMAN: I think RF monitoring is most
2 appropriate as far as affordability and it monitors his coming and
3 going.

4 Would you prefer he be on a curfew, home detention or
5 home incarceration? I assumed curfew or home detention because
6 you're going to allow him to work.

7 THE COURT: Yeah. I assume once they get settled, he's
8 walking up the street to the hardware store and counting parts.

9 Do you have a schedule for that?

10 MR. CHAMBERS: Yes, ma'am. 0730 -- 7 a.m. to 5:30 p.m.
11 Monday through Friday. Some Saturdays off, but generally 8 until
12 3 p.m. I don't expect anyone to work on a Sundays but myself.

13 So Saturday and a lot of time off -- that will leave for
14 mental health and any appointments that -- as you see fit.

15 THE COURT: Right. He'll need to meet with his lawyer.

16 But if you're not meeting with your lawyer, going to
17 church or the synagog or seeing your mental health professional, or
18 going to the doctor, or going to work, then you need to be at your
19 home unless the probation officer lets you out. Do you understand
20 that?

21 So you've just heard your new work hours. I don't know
22 what your salary is. That might be really going beyond the bounds
23 of what I'm supposed to cover here; but if you're not going to work
24 those hours, I think you ought to let me know.

25 MS. PEREIRA: Your Honor, I think that the home detention

1 provision allows for -- if he's not at work, then he must be at home
2 other than for education, religious services, medical, substance
3 abuse, mental health treatment, attorney visits, court appearances.
4 I think that all kind of gets --

5 THE COURT: Are you okay with that?

6 PROBATION OFFICER LUNSMAN: Yes. Home detention seems
7 most appropriate in this case.

8 THE COURT: Okay. Can I task our probation officer with
9 suggesting to the Court the proposed order setting conditions of
10 release? And Ms. Castania just handed me a form and I'll hand it
11 back to her for her to give it to you and that -- and you can meet
12 with Mr. Chambers, figure out the address information, and I'll be
13 in the next hearing and you can bring it back to me and I'll sign
14 it.

15 But this will be a chance, too, for Ms. Kocher to make
16 sure that, without waiving her right to complain about this
17 decision, if there's something missing and you think it needs to be
18 in there, I certainly would like to know it.

19 MS. KOCHER: Yes.

20 THE COURT: Okay. So I suppose I'm going to be putting
21 you back in the custody of the Marshal Service until I get this
22 order inked, but I'm prepared to act on it as soon as it's proposed,
23 along with terms and conditions outlined and discussed here.

24 And I'll look forward to hearing about your progress
25 under release at that 17.1 conference, which is an opportunity for

1 the Court and the parties to come together and consider matters that
2 bear on the fair, just and expeditious resolution of this case that
3 now includes this new count. So unless there's anything else for me
4 to consider.

5 Thank you for the patience of the civil parties.

6 I will take my 10-minute recess and come back. And
7 again, I can be interrupted with this order.

8 Anything further, Ms. Kocher?

9 MS. KOCHER: No, your Honor.

10 THE COURT: And for the defendant?

11 MS. PEREIRA: No, your Honor. Thank you.

12 THE COURT: Well, thank you all. We'll be in recess.

13 (Hearing adjourning at 11:29 a.m.)

14 (Whereupon the Court heard other matters and returned to the Initial
15 Appearance and Detention matter at 11:56 a.m.)

16 THE COURT: Could I just interrupt you right there just
17 for a second?

18 Would you come forward.

19 If you want to take a break.

20 (Probation Officer Lunsman approaching the Bench with documents)

21 THE COURT: I had promised to send Mr. Fedak to
22 Greensboro to start counting.

23 Has Ms. Kocher reviewed this?

24 PROBATION OFFICER LUNSMAN: Yes.

25 THE COURT: Okay. All right. Before you leave the room

1 just make sure you've got what you need. Just take a second. And I
2 think I've signed it in the right place.

3 PROBATION OFFICER LUNSMAN: (Reviewing document). Yes,
4 it looks great.

5 THE COURT: All right. Good luck. Thank you for your
6 help.

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9 (Conclusion of proceedings at 11:57 a.m.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3

4 CERTIFICATE OF OFFICIAL REPORTER
5

6 I, Michelle A. McGirr, RMR, CRR, CRC, Federal
7 Official Court Reporter, in and for the United States District Court
8 for the Western District of North Carolina, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code, that the
10 foregoing is a true and accurate transcript of my stenographically
11 reported proceedings held in the above-entitled matter and that the
12 transcript page format is in conformance with the regulations of the
13 Judicial Conference of the United States.
14

15 Dated this 12th day of April, 2023
16

17 /s/ Michelle A. McGirr
18 MICHELLE A. MCGIRR
19 RMR, CRR, CRC
20 U.S. Official Court Reporter
21
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25